IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/01/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 15905 OF 2002
AND
W.P.M.P. NO. 51823 OF 2002
W.V.M.P. NO. 977 OF 2002

S.Venkataraman .. Petitioner

- Vs -

1. Union of India rep. By
Chief of the Air Staff
Indian Air Force
Air Head Quarters (VB)
New Delhi 11.

2. Air Officer Personnel (IAF)
Air Head Quarters (VB)
New Delhi 11.

3. Air Officer Commanding
Air Force Record Office
Subroto Park
New Delhi 10.

4. Air Officer Commanding
Air Force Station
Tambaram
Chennai 600 046. .. Respondents

Petition filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Mandamus as stated therein.

For Petitioners : Mr. S.James

For Respondents : Mr. K.Ravichandrababu

:ORDER
1. The petitioner has prayed for the issue of a writ of mandamus calling for the records pursuant to the proceedings of the 3rd respondent in RO/2504/2/PW (Dis) dated 12.4.2001 and quash the same insofar as the petitioner (S.No.8 is concerned) and direct the respondents to grant extension of service for a

further period of three years.
2. The petitioner joined Indian Air Force on 12.5.1973. While in service he met with an accident during 1975 resulting in amputation of his right leg. The Court of enquiry convened in this respect recorded a finding that the injury was attributable to service. The petitioner was thereafter retained in service in lower medical category as a Clerk (General Duties) with 90% disability. The petitioner completed 15 years of initial engagement. The service of the petitioner was extended for six years at the first instance and, thereafter, for five and three years respectively for the second and third time. The petitioner has so far completed 29 years of service. His present term of engagement came to an end on 31.5.2002.
3. The petitioner applied for extension of service for a further period of three years on 22.8.2000 to the 4th respondent. The Specialist Medical Officer issued a certificate certifying that the petitioner is fit for carrying out his trade and his disability, disarticulation of right hip, is attributable to service. The 4th respondent also reported that the petitioner is suitable for further extension of service on 18.10.2000 and forwarded the same to the 3rd respondent for approval. The 3rd respondent, however, rejected the application for extension of service, which is being challenged in this writ petition. The petitioner submitted representation under Section 26 of The Air Force Act, 1950, to the 3rd respondent through proper channel.
4. The Airmen are assessed annually for true proficiency and character. In all about 100 marks is fixed out of which a total of 26 marks are allotted to drill bearing and interest in sports. Remaining 74 marks, the petitioner has to secure 94.6%, whereas other normal and medically fit airmen have to secure only 70% in average of previous five years to get extension of service. The annual assessment marks awarded for the petitioner is not based on any examination or periodical markings. It is arbitrary and the award of marks in this respect is arbitrary. The representation submitted has not been considered and, therefore, the petitioner has come before this Court.
5. The petitioner contends that he being a physically disabled, no award of marks in discipline or interest in sports as well as drill will arise and for the balance of 74 marks alone, assessment, if any, has to be made. The respondents have not disclosed the assessment of marks with respect to the petitioner and the discharge of the petitioner is arbitrary and invalid in law. When the Specialist Medical Officer has certified that the petitioner is suitable and the Unit Head, the 4th respondent, has already recommended for extension, the competent authority has acted arbitrarily in denying extension of engagement, which is contrary to the criteria laid down in para 4(f) of the engagement policy. The order impugned is liable to be quashed.
6. On behalf of the respondents, the 4th respondent has filed a counter. According to the respondents, Air Force instruction 12/S/48 is issued in respect of service conditions of personnel below officers rank. Air Force Order 11/99 has been issued by Air Head Quarters to all Air Force Units in clarification of Air Force Instructions 12/S/48 in respect of terms and conditions governing grant of extension of service of Airmen. The said circular is mandatory. The extension of service of Air Force personnel, including the petitioner, is not an inherent right vested in him nor the petitioner could demand the same as a matter of right. The extension of service is solely at the discretion of the competent authority in terms the said two circulars issued by Air Head Quarters. The extension is granted on

the basis of merit reflected in the attaining of required amount of grades or marks for the last five years, medical fitness, conduct records, passing of promotion examination and service requirements, etc. The said policy of extension of service has been upheld by various Courts including this Court.

7. With respect to refusal to extend the service, principles of natural justice will have no application. The petitioner's term of extended engagement expired on 11.5.2002. He submitted his application for extension of engagement for a further period of three years. The request of the petitioner was examined as per the policy AFO 11/99. The petitioner is placed under medical category Cat CEE(P) (Attributable) and also in meeting the required assessment category. The petitioner was ineligible for extension of engagement of service. The request for extension of engagement was not approved by the competent authority and discharge order was passed. Accordingly, he has been discharged on the expiry of the last engagement.

8. The Air Force Head Quarters had framed the policy for extension of engagement of airmen and various principles to be adopted has been set out. The policy laid down in this respect reads thus :-

"This policy has been formulated to ensure that only those airmen who meet minimum criteria are allowed to extend their engagement. An airmen who is consistent in his overall performance may be granted extension of engagement, which is governed by the following principles :-

(a) Service requirements
(b) Willingness for extension of engagement
(c) Medical fitness
(d) Passing of Promotion Examinations
(e) Conduct records
(f) ACR/Assessments for last five years
(g) Suitable for Extension
(h) Certificate of Undertaking (CoU).

Further para 4(f) of the above stated AFO is reproduced as under :-

(f) ACR & Assessment : For the purpose of grant of extension, annual assessments and/or his assessment in confidential reports during the last five years will be considered. An airman who has secured an average of 60% or above marks in his assessment/confidential reports shall be eligible for grant of first extension of engagement subject to his fulfilling other conditions as laid down in this AFO. For the second and subsequent spells of extension of engagement, the airmen will have to score the following minimum percentage :-

(i) Sgt 70%
(ii) JWO 72.5%
(iii) WO/MWO 75%

Note :- The rank actually held by the airmen during the last five years will be taken into consideration while arriving at the minimum average ACR/assessment marks."

9. The petitioner was required to score 70% in his assessment during the last five years, which he failed to score and accordingly discharge order has been passed. There has been further review in terms of para-5 (c) (iii) of Air Force Order 11/99 by taking into consideration of assessment for the year 2001. The petitioner still failed to score the required minimum percentage and thus he was not found to be eligible for extension of engagement in terms of para-4 (f) of The Air Force Order and he was discharged with effect from 31.5.2002. The respondents have set out the yearwise assessment of the

petitioner in para-9 of the counter affidavit. The petitioner has scored only 67.4 % for the years 1996-2000 and he was not meeting the assessment criteria for grant of extension of service. A review was undertaken, but it was also rejected. The petitioner has already been discharged with effect from 31.5.2002.

10. It is contended that the various contentions advanced by the petitioner are devoid of merits, untenable and the petitioner cannot seek for extension of engagement for a further period of three years as he has already had the benefit of three extensions. That apart, the petitioner's family members are already employed in the Air Force and he and his family are well placed. The extension has not been approved by the competent authority and accordingly discharge order has been issued. It is for the competent authority to decide as to whether the petitioner has to be given extension of engagement or not. This Court sitting under Article 226 will not interfere with the said decision taken by the competent authority as the competent authority takes into consideration of the interest of the Air Force.

11. A rejoinder has been filed by the petitioner contending that there was no hard and fast rule regarding extension of service. It is also stated that at no point of time the petitioner has been administered a warning or caution regarding shortfall of annual assessment marks. It is claimed that the petitioner has scored 70.% for two years, whereas annually for one year he has secured 70% minimum to get extension of service. It is contended that there was no reply or communication with respect to the disposal of his representation dated 30.4.2 001. It is claimed that the character of the petitioner has been assessed as "Very Good" throughout, but for the year 2001, the concerned officer has awarded 64 marks without disclosing any reason. The petitioner's right leg is amputated totally due to accident attributable to service and, therefore, he should be retained in service and at the age of 49 years it is impossible for the petitioner to re-settle in civil life.

12. Heard Mr.S.James, learned counsel appearing for the writ petitioner and Mr.K.Ravichandrababu, learned Additional Central Government Standing Counsel appearing for the respondents.

13. The points that arise for consideration in this writ petition are :-

"i) Whether the petitioner is entitled for extension of engagement ?

ii) Whether the order impugned is liable to be quashed?"

14. The law laid down in this respect is well settled. After analysing the earlier case law, this Court in RAMSINGH BARGUJAR VS. UNION OF INDIA & OTHERS made in W.P. No.13100 of 1999 dated 12.10.1999 held that the refusal to engage or extend the period of service would not constitute a stigma nor it is an infraction of privileges or punishment and the request for extension of engagement is refused solely on the ground that the individual could not reach the grade in accordance with the norms fixed by the proceedings by the authorities and it is only a refusal to extend the engagement based upon performance and usefulness and, therefore, the petitioner cannot compel the respondents to engage him till he attains a particular age nor the respondents could compel the petitioner to continue in engagement.

15. The Apex Court in the above context in SWATANTAR SINGH VS. STATE OF HARYANA & OTHERS reported in 1997 (4) SCC 14, held thus:-

"5. We find no force in the contention. It is true that in view of the settled legal position, the object of writing the confidential reports or character roll of a government servant and communication of the adverse

remarks is to afford an opportunity to the officer concerned to make amends to his remissness, to reform himself, to mend his conduct and to be disciplined, to do hard work, to bring home the lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a government servant reflecting a accurately as possible his sagging inefficiency and incompetency. The defects and deficiencies brought home to the officer, are means to the end of correcting himself and to show improvement towards excellence. The confidential report, therefore, would contain the assessment of the work, devotion to duty and integrity of the officer concerned. The aforestated entries indicate and reflect that the Superintendent of Police had assessed the reputation gathered around the officer's performance of the duty and shortfalls in that behalf."

In the said case the individual officer concerned has got a full tenure and where an adverse entry is made against the individual which may ultimately prejudice the rights of the individual officer or take away the individual's right to continue for full tenure without giving an opportunity. That is not the case here. Here the petitioner has no right to continue beyond the period unless an order for fresh engagement is passed.

13. Depending upon the performance or efficiency, the respondent may deem it proper to engage. This would not mean an adverse entry or entry in the ACR is adverse to that of the writ petitioner. But it is an assessment of suitability and desirability for further engagement and it is not as if a vested right is sought to be divested by the said report, referred as ACR. All that the respondent take note of is that the performance of the individual before extending the service. As the petitioner has no right to compel the respondents to engage him for an indefinite period or till he completes 57/58 years, the reliance placed on the reports by the respondents in no manner violate the principles of nature justice, nor it takes away the vested right of the petitioner.

14. The contention advanced by Mr.C.Selvaraj, learned counsel for the petitioner in this respect and his placing reliance on the above two pronouncement of the Apex Court cannot be countenanced as this is not a case where a right to continue in the post is being taken away or a right to the promotion is being denied or a right to continue till a particular age is being denied by the adverse entries. On the other hand, the performance of the individual airman is considered for future engagement. It is not as if he is being siphoned of his right to continue till the engagement already ordered is completed. Hence the contention has no force and it fails.

15. The writ petitioner is governed by the Air Force Act, 1950. Chapter III and IV of the Act prescribes, Commission, Appointment Enrolment as well as Conditions of service. In exercise of powers conferred by section 189 of the Air Force Act, the Government of India had framed the Air Force Rules, 1969. Under the Air Force Act and Rules, instructions, circulars have been issued prescribing the period of engagement which could be broadly divided as "Regular Service" and " Extension of Service by Engagement". It has to be pointed out that the very engagement cannot be claimed as a matter of right.

16. The relevant circular indicates the policy of engagement of Members of Airmen could be extracted as hereunder:-

"PERIOD OF ENGAGEMENT : Candidate will be conveyed with effect from the date of enrolment for the undercounted periods of service with the Regular Air

Force and in the Regular Air Force Reserve:-
(a) Regular Service
(i) Candidates will be enrolled initially for 15 years regular service but those who fail to attain the rank of Corporal within 9 years will be discharge.
Note; Airmen already serving their 9 years initial engagement may be allowed to contract for 15 years engagement counting from the date of their enrolment subject to the fulfillment of the condition mentioned in this sub clause.
(ii) On completion of 15 years regular service an airman may be allowed, at the discretion of the C.A.S. to extent the period of regular service by 6 years to complete 21 years service further extension of regular service may be granted for a period of 3 years at a time or such shorter period as deemed necessary up to the age of 55 years."
The Policy reads thus:-
"The initial Term of Engagement for Airmen is 20 years vide para 12 of AFI 12/5/48 (amended vide AFI 21/79/Corrigendum 15/79) and for the Ncs(E) it is 15 years vide AFI 14/80. I here being no other type of Engagement prevailing at present, this letter is being issued to bring the subject under one policy letter in its entirety.
ACR & ACCESSMENTS
For the purpose of grant of extension, annual assessments and/or his assessments in confidential report during the last five years will be considered. An airman who has secured an average of 60% or above marks in his assessments/confidential report shall be eligible for grant of First Extension of Engagement, subject to his fulfilling other conditions as laid down in this policy. For the second and subsequent spells of Extension of engagement, the airman will have to score the minimum average which is required for him to be promoted to the next higher rank. This will be applicable for all airman whose regular engagement expires on or after 01 Jul. 1998."
17. In the light of the said policy, it is clear the discretion is well within the powers of the respondent either to grant extension or engagement applying the criteria or formula mentioned in the policy. Wherever the authority finds an airman suitable he would be engaged for a further period of three years or for further period as the case may be. However, when the authority deems it not to engage the airman for a further period, as the airman having no claim or vested right he cannot compel the respondent to engage him till he attains the maximum age of superannuation.
18. The ACR is not an adverse report but it is the performance of the writ petitioner which is a relevant factor which the respondent could very well take into consideration while giving fresh engagement and it is not as if it has been taken into consideration to deny a right which has accrued to the petitioner or the petitioner is denied of his right to continue till he completes the age of superannuation. The petitioner has no such right to hold the post for a particular period or till he attains the age of superannuation or a fixed tenure.
19. The learned counsel for the respondent relied upon the decisions of the Delhi High Court in C.W.No.3117 of 1998 etc., dated 28th August, 1998 as well as the judgment of LAHOTI,J., in LPA.No.416 of 1998. LAHOTI, J., as he then was, held thus:-
"5.1. It was submitted that the 'officers' enjoy a larger tenure and in spite of their record being poor they are not discharged from service while the

petitioner has been so discharged. The learned counsel for the respondents pointed out that the officers have a security of service and their statutory term of appointment cannot be brought to a premature and except in accordance with the provisions of the Act and the Rules.

5.2 'Airman' is defined in clause (viii) of Section 4 of the Air Force Act, 1950 to mean any person subject to this Act other than an ' officer'. The definition of 'officer' in clause (xxiii) does not include as Warrant Officer. It was the own case of the petitioner-appellant that an airman is Warrant Officer. As the Act itself contemplates distinction between an Officer other than a Warrant Officer and a Warrant Officer, the petitioner, an airman, cannot claim parity in the matter of treatment with officers.

5.3. The other limb of the submission in support of the plea of discrimination has that there were about 77 airman retained in service by giving extension of service while the petitioner was denied the same. The learned counsel for the respondents has pointed out that not all airman were required in the force and therefore, a policy decision was taken and consistently therewith the records of the individual airman were scrutinised. The airman whose performance was above a certain standard, were given extension of service while those who did not come up to the standard laid down in the policy were denied such extension. There is nothing wrong in the procedure so adopted. The charge of discrimination, therefore, fails."

20. A learned Single Judge of the Andhra Pradesh High Court had occasion to deal with the identical situation in W.P.No.17981 of 1999 dated 1st September, 1999. BILAL NAZKI,J after referring to the same circular as well as ACR and assessment held that the regulations make it clear that the petitioner who expects an engagement has to obtain the marks as prescribed and if he fails to do so, he will not be considered for extension and he has no right to compel the respondent to extend his engagement for any period."

16. In this case, it is not once, but thrice extension has been granted by the respondents and extension has been refused and on review also it has been affirmed. The refusal to extend as well as refusal to interfere with the order on a review is strictly in accordance with Air Force Order 11/99 and 05/97. On 29.3.2001 the competent authority discharged the petitioner as his extension came to an end and has declined to extend the engagement for a further period applied for by taking into consideration of his performance. The review also resulted in dismissal. There has been a consideration of the petitioner's case by the competent authority as well as the reviewing authority and for valid reasons they have declined to grant extension of engagement.

17. In this respect, the learned counsel for the respondents rightly relied upon the judgment of the Delhi High Court in C.W. No.3117 of 1 998 dated 26.8.1998, C.W. No.4207 of 1998 dated 15.9.98 and Letter Patent Appeal No.416 of 1998 of the Delhi High Court dated 24.9.98. The law laid down by this Court in the earlier writ petitions also squarely applies to the facts of the present case.

18. In STATE OF U.P. VS. GIRISH BEHARI reported in 1997 (4) SCC 362, the Apex Court held that even for cancellation of extension before the extension actually came into force, it was not necessary to afford an opportunity of hearing.

19. This Court called upon the respondents to produce the file to satisfy itself about the annual assessment. As seen from the assessment with respect

to the writ petitioner for extension, it is noticed that he was awarded one red ink entry in the assessment year 2001. Negative marks for red ink entry is 10. The total qualifying marks for extension of service promotion is 350, while the individual has secured only 345 marks in total from 1997 to 2001. The petitioner was short of five marks for further extension of service. That apart, ten marks have to be deducted on account of red ink entry from 345 marks. Thus the petitioner was short of 15 marks for further extension of promotion. During the year 1996 also total marks secured is 56.

20. In the light of the above assessment by the competent authority, which is based upon objective standards and in the light of the circular issued by the Air Force, this Court is of the considered view that no exception could be taken to the assessment. This Court in exercise of writ jurisdiction will not be justified in reassessing the suitability or otherwise of the extension of engagement. In the absence of any mala fides or arbitrariness, the petitioner cannot successfully challenge the assessment, which has been undertaken strictly in terms of the Air Force circular referred to above.

21. In the light of the above discussion, this Court holds that the petitioner is not entitled for extension of engagement and both the points are answered against the writ petitioner. In the result, this writ petition is dismissed, but without costs. This Court holds that the petitioner is not entitled to any relief. Consequently, connected miscellaneous petitions are also dismissed.

Index : Yes
Internet : Yes

GLN

To

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